IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7728 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MEHBOOBBHAI BHIKHUBHAI PATHAN THR'FARJANABEN FIROJBHAI - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY &3 - Respondent(s)

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Appearance :

MR.SUBHASHGBAROTfor Petitioner No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 1,2.
Mr.P.D.Bhate, AGP for Respondent No(s).: 3.

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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 29/06/2005

ORAL JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7263 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DEVIKABEN W/O VINUBHAI RAJPUT (THAKORE) - Petitioner(s)

Versus

COMMISSIONER OF POLICE &3 - Respondent(s)

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Appearance :

MS DR KACHHAVAH for Petitioner No(s).: 1.
MR KAMLESH KACHHAVAH for Petitioner No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 1,2.
MR PD BHATE, AGP for Respondent No(s).: 3.

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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 28/06/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 03.03.2005 passed by the District Magistrate, Bhavnagar in exercise of the

powers conferred upon him under sub-section(2) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (“the Act” for short), as, the “bootlegger” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

1. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to three criminal cases which are filed under the Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.
2. Learned advocate appearing on behalf of the petitioner detenu has submitted that there is delay in passing the detention order against the petitioner. The last offence was registered against the petitioner on 27.01.2005 and the detention order came to be passed on 03.03.2005. Learned advocate appearing for the petitioner has relied upon the decision of this court in the case of Elesh Nandubhai Patel V/s Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :

It is, therefore, submitted that the subjective satisfaction of the detaining authority is vitiated on the ground of delay in passing the detention order after the last incident and, therefore, the impugned detention order is required to be quashed and set aside.

1. On the other hand, Mr.Bhate, learned AGP has tried to support the impugned detention order against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2.
2. The impugned order came to be challenged by the petitioner detenu on various grounds. One of the grounds is the delay in passing the detention order. The last criminal case was registered with `D' Division Police Station being CR No.44 of 2005 against the petitioner on 27.01.2005 under the Bombay Prohibition Act, and, therefore, delay in passing the detention order may reflect non-application of mind in arriving at the subjective satisfaction by the detaining authority. It is true that the delay by itself in passing the detention order not fatal to the detention of the person and has to be looked into from the facts of each case. The facts of this case are squarely covered by the decision of this Court in the matter of Elesh Nandubhai Patel V/s Commissioner of Police, reported in 1997(1) GLH 381, the detention order, therefore, cannot be sustained and deserves to be quashed on this ground alone.
3. In view of what is stated above, the petition is allowed. The order of detention dated 03.03.2005 is quashed and set aside. The detenu Mehboobbhai Bhikhubhai Pathan is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

srilatha